



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2020-0418; FRL-10016-28-Region 9]

Air Quality Implementation Plan; California; Northern Sierra Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a revision to the Northern Sierra Air Quality Management District (NSAQMD or “District”) portion of the California State Implementation Plan (SIP). In this action, we are approving a rule submitted by the NSAQMD that governs the issuance of permits for stationary sources, which focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”).

DATES: This rule will be effective on **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0418. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a

person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4174, or by email to *batchelder.amber@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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I. Proposed Action

On September 23, 2020 (85 FR 59729), the EPA proposed to approve the following rule into the California SIP.

Table 1 Submitted Rule

District	Rule #	Rule title	Adopted	Submitted ¹
NSAQMD	428	NSR Requirements for New and Modified Major Sources in Nonattainment Areas	11/25/19	02/19/20

The EPA determined that the California SIP submittal listed above in Table 1 met the completeness criteria in 40 CFR part 51, appendix V. The EPA’s signed notice of proposed rulemaking served as the EPA’s formal completeness determination.

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review

¹ The submittal was transmitted to the EPA via a letter from the California Air Resources Board dated February 6, 2020.

(NNSR). The rule listed in Table 1 contains the District's NNSR permit program applicable to new and modified major sources located in areas within the District that are designated nonattainment for any NAAQS for ozone or particulate matter equal to or less than 2.5 micrometers (PM_{2.5}). The rule also contains the District's requirements for the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307. We proposed to approve this rule into the California SIP because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. We continue to find that NSAQMD Rule 428 satisfies the relevant requirements for a CAA NNSR program for ozone and PM_{2.5}, as well as the associated visibility requirements for sources subject to review under such a program in accordance with 40 CFR 51.307. Therefore, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of NSAQMD Rule 428. This action incorporates the submitted rule into the California SIP. In conjunction with the EPA's SIP approval of the District's visibility program for sources subject to the NNSR program, this action also revises the scope of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 in California so that this FIP no longer applies to sources located in the NSAQMD that are subject to the District's visibility program.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by

reference of the rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 4, 2020.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

For reasons set out in the preamble, EPA amends 50 CFR part 52 as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart F – California

2. Section 52.220 is amended by adding paragraph (c)(546) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(546) The following regulations were submitted on February 19, 2020 by the Governor's designee as an attachment to a letter dated February 6, 2020.

(i) *Incorporation by reference.*

(A) Northern Sierra Air Quality Management District.

(I) Rule 428, "NSR Requirements for New and Modified Major Sources in Nonattainment Areas," adopted on November 25, 2019.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

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3. Section 52.281 is amended by revising paragraphs (d)(3) and (d)(4) and by adding paragraph (d)(5) to read as follows:

§ 52.281 Visibility protection.

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(d) * * *

- (3) Calaveras County air pollution control district,
- (4) Mariposa County air pollution control district, and
- (5) Northern Sierra air quality management district.

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[FR Doc. 2020-24926 Filed: 11/19/2020 8:45 am; Publication Date: 11/20/2020]